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5 Attorney for Plaintiff  
6 Jose Trujillo

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA**

11 JOSE TRUJILLO, ) No.  
12 Plaintiff, )  
13 vs. )  
14 MALWA FOOD MART INC; MANJIT ) **COMPLAINT ASSERTING DENIAL OF**  
15 SINGH dba US GAS AND FOOD; ) **RIGHT OF ACCESS UNDER THE**  
16 BALWINDER SINGH dba US GAS AND ) **AMERICANS WITH DISABILITIES ACT**  
FOOD; ) **FOR INJUNCTIVE RELIEF, DAMAGES,**  
17 Defendants. ) **ATTORNEYS' FEES AND COSTS (ADA)**  
18 )  
19 )

## I. SUMMARY

21       1. This is a civil rights action by plaintiff JOSE TRUJILLO (“Plaintiff”) for  
22 discrimination at the building, structure, facility, complex, property, land, development, and/or  
23 surrounding business complex known as:

US Gas and Food  
1930 West Clinton Ave.  
Fresno, California 93274  
(hereafter "the Facility")

27       2. Plaintiff seeks damages, injunctive and declaratory relief, attorney fees and  
28 costs, against MALWA FOOD MART INC; MANJIT SINGH dba US GAS AND FOOD; and

1 BALWINDER SINGH dba US GAS AND FOOD (hereinafter collectively referred to as  
2 “Defendants”), pursuant to Title III of the Americans with Disabilities Act of 1990 (42 U.S.C.  
3 §§ 12101 et seq.) (“ADA”) and related California statutes.

4 **II. JURISDICTION**

5 3. This Court has original jurisdiction under 28 U.S.C. §§ 1331 and 1343 for ADA  
6 claims.

7 4. Supplemental jurisdiction for claims brought under parallel California law –  
8 arising from the same nucleus of operative facts – is predicated on 28 U.S.C. § 1337.

9 5. Plaintiff’s claims are authorized by 28 U.S.C. §§ 2201 and 2202.

10 **III. VENUE**

11 6. All actions complained of herein take place within the jurisdiction of the United  
12 States District Court, Eastern District of California, and venue is invoked pursuant to 28 U.S.C.  
13 § 1331(b), (c).

14 **IV. PARTIES**

15 7. Defendants own, operate, and/or lease the Facility, and consist of a person (or  
16 persons), firm, and/or corporation.

17 8. Plaintiff is substantially limited in his ability to walk, and uses a wheelchair or  
18 cane for mobility. In addition, Plaintiff’s hearing is substantially limited. Consequently,  
19 Plaintiff is “physically disabled,” as defined by all applicable California and United States  
20 laws, and a member of the public whose rights are protected by these laws.

21 **V. FACTS**

22 9. The Facility is open to the public, intended for non-residential use, and its  
23 operation affects commerce. The Facility is therefore a public accommodation as defined by  
24 applicable state and federal laws.

25 10. Plaintiff is a California resident who lives within approximately 45 miles of the  
26 Facility. He regularly travels to the area where the Facility is located and visited the Facility on  
27 or about June 28, 2021 to purchase fuel for his vehicle. During his visit to the Facility, Plaintiff  
28 encountered the following barriers (both physical and intangible) that interfered with, if not

1 outright denied, Plaintiff's ability to use and enjoy the goods, services, privileges and  
2 accommodations offered at the Facility:

- 3           a) Plaintiff could not locate an accessible fuel pump at the Facility. He  
4            parked at a pump that had an International Symbol of Accessibility  
5            sticker on what appeared to be a button. He pressed the button for  
6            assistance and waited, but no one came outside. Next, he honked to get  
7            the attention of the employees inside the store, but no one came out to  
8            assist him, so finally he was forced to fuel the vehicle himself. Plaintiff  
9            recalled that on a previous visit he had tried to purchase fuel at the pump  
10           while using his wheelchair and had difficulty seeing the screen prompts  
11           at the pump due to its height. Therefore, he knew that he could not use  
12           his wheelchair to fuel the vehicle himself, and had to use his cane  
13           instead which was more difficult.
- 14           b) Additionally, Plaintiff observed that there were obstacles blocking the  
15           route of travel to the entrance including a pole and sign in the middle of  
16           the primary entrance ramp, which he would have difficulty navigating  
17           past in his wheelchair. There appeared to be another ramp at the far end  
18           of the walkway, but the walkway between that ramp and the store  
19           entrance was obstructed by water and propane storage. This was another  
20           reason that he was forced to use his cane to go inside the store. It was  
21           difficult, as he had to compete with passing vehicular traffic to cross the  
22           parking lot with his cane.
- 23           c) The Facility entrance door was difficult for Plaintiff to open because it  
24           did not have a level exterior landing and the door was too heavy.
- 25           d) The main transaction counter was too high, which made it hard for  
26           Plaintiff to use as he had difficulty maintaining his balance while using  
27           the point-of-sale device.
- 28           e) Plaintiff needed to use the restroom while at the Facility, but decided not

1 to because of numerous obstacles he observed. The path of travel to the  
2 restroom appeared cracked and uneven, and would have been difficult  
3 for Plaintiff to walk or wheel across, and the route could have become  
4 obstructed had a vehicle pulled into the parking stalls along the  
5 walkway. The restroom door had a padlock which would have been  
6 difficult for Plaintiff to open while maintaining balance with his cane.

7 11. The barriers identified in paragraph 10 herein are only those that Plaintiff is  
8 presently aware of. Plaintiff is presently unaware of other barriers which may in fact exist at  
9 the Facility and relate to his disabilities. Plaintiff will seek to amend this Complaint once such  
10 additional barriers are identified as it is Plaintiff's intention to have all barriers which exist at  
11 the Facility and relate to his disabilities removed to afford him full and equal access.

12 12. Plaintiff was, and continues to be, deterred from visiting the Facility because  
13 Plaintiff knows that the Facility's goods, services, facilities, privileges, advantages, and  
14 accommodations were and are unavailable to Plaintiff due to Plaintiff's physical disabilities.  
15 Plaintiff enjoys the goods and services offered at the Facility, and will return to the Facility  
16 once the barriers are removed.

17 13. Defendants knew, or should have known, that these elements and areas of the  
18 Facility were inaccessible, violate state and federal law, and interfere with (or deny) access to  
19 the physically disabled. Moreover, Defendants have the financial resources to remove these  
20 barriers from the Facility (without much difficulty or expense), and make the Facility  
21 accessible to the physically disabled. To date, however, Defendants refuse to either remove  
22 those barriers or seek an unreasonable hardship exemption to excuse non-compliance.

23 14. At all relevant times, Defendants have possessed and enjoyed sufficient control  
24 and authority to modify the Facility to remove impediments to wheelchair access and to  
25 comply with the 1991 ADA Accessibility Guidelines and/or the 2010 ADA Standards for  
26 Accessible Design. Defendants have not removed such impediments and have not modified the  
27 Facility to conform to accessibility standards. Defendants have intentionally maintained the  
28 Facility in its current condition and have intentionally refrained from altering the Facility so

1 | that it complies with the accessibility standards.

2 15. Plaintiff further alleges that the (continued) presence of barriers at the Facility is  
3 so obvious as to establish Defendants' discriminatory intent. On information and belief,  
4 Plaintiff avers that evidence of this discriminatory intent includes Defendants' refusal to adhere  
5 to relevant building standards; disregard for the building plans and permits issued for the  
6 Facility; conscientious decision to maintain the architectural layout (as it currently exists) at the  
7 Facility; decision not to remove barriers from the Facility; and allowance that Defendants'  
8 property continues to exist in its non-compliant state. Plaintiff further alleges, on information  
9 and belief, that the Facility is not in the midst of a remodel, and that the barriers present at the  
10 Facility are not isolated or temporary interruptions in access due to maintenance or repairs.

## VI. FIRST CLAIM

## **Americans with Disabilities Act of 1990**

## Denial of “Full and Equal” Enjoyment and Use

16. Plaintiff re-pleads and incorporates by reference the allegations contained in  
each of the foregoing paragraphs, and incorporates them herein as if separately re-pled.

16        17. Title III of the ADA holds as a “general rule” that no individual shall be  
17 discriminated against on the basis of disability in the full and equal enjoyment (or use) of  
18 goods, services, facilities, privileges, and accommodations offered by any person who owns,  
19 operates, or leases a place of public accommodation. 42 U.S.C. § 12182(a).

18. Defendants discriminated against Plaintiff by denying Plaintiff “full and equal enjoyment” and use of the goods, services, facilities, privileges and accommodations of the Facility during each visit and each incident of deterrence.

## Failure to Remove Architectural Barriers in an Existing Facility

24       19. The ADA specifically prohibits failing to remove architectural barriers, which  
25 are structural in nature, in existing facilities where such removal is readily achievable. 42  
26 U.S.C. § 12182(b)(2)(A)(iv).

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1       20. When an entity can demonstrate that removal of a barrier is not readily  
2 achievable, a failure to make goods, services, facilities, or accommodations available through  
3 alternative methods is also specifically prohibited if these methods are readily achievable. Id.  
4 § 12182(b)(2)(A)(v).

5       21. Here, Plaintiff alleges that Defendants can easily remove the architectural  
6 barriers at the Facility without much difficulty or expense, that the cost of removing the  
7 architectural barriers does not exceed the benefits under the particular circumstances, and that  
8 Defendants violated the ADA by failing to remove those barriers, when it was readily  
9 achievable to do so.

10      22. In the alternative, if it was not “readily achievable” for Defendants to remove  
11 the Facility’s barriers, then Defendants violated the ADA by failing to make the required  
12 services available through alternative methods, which are readily achievable.

13                          Failure to Design and Construct an Accessible Facility

14      23. Plaintiff alleges on information and belief that the Facility was designed and  
15 constructed (or both) after January 26, 1993 – independently triggering access requirements  
16 under Title III of the ADA.

17      24. The ADA also prohibits designing and constructing facilities for first occupancy  
18 after January 26, 1993, that aren’t readily accessible to, and usable by, individuals with  
19 disabilities when it was structurally practicable to do so. 42 U.S.C. § 12183(a)(1).

20      25. Here, Defendants violated the ADA by designing and constructing (or both) the  
21 Facility in a manner that was not readily accessible to the physically disabled public –  
22 including Plaintiff – when it was structurally practical to do so.<sup>1</sup>

23                          Failure to Make an Altered Facility Accessible

24      26. Plaintiff alleges on information and belief that the Facility was modified after  
25 January 26, 1993, independently triggering access requirements under the ADA.

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28      <sup>1</sup> Nothing within this Complaint should be construed as an allegation that Plaintiff is bringing this action as a  
private attorney general under either state or federal statutes.

1       27. The ADA also requires that facilities altered in a manner that affects (or could  
2 affect) its usability must be made readily accessible to individuals with disabilities to the  
3 maximum extent feasible. 42 U.S.C. § 12183(a)(2). Altering an area that contains a facility's  
4 primary function also requires making the paths of travel, bathrooms, telephones, and drinking  
5 fountains serving that area accessible to the maximum extent feasible. *Id.*

6       28. Here, Defendants altered the Facility in a manner that violated the ADA and  
7 was not readily accessible to the physically disabled public – including Plaintiff – to the  
8 maximum extent feasible.

#### Failure to Modify Existing Policies and Procedures

10        29. The ADA also requires reasonable modifications in policies, practices, or  
11 procedures, when necessary to afford such goods, services, facilities, or accommodations to  
12 individuals with disabilities, unless the entity can demonstrate that making such modifications  
13 would fundamentally alter their nature. 42 U.S.C. § 12182(b)(2)(A)(ii).

14       30. Here, Defendants violated the ADA by failing to make reasonable modifications  
15 in policies, practices, or procedures at the Facility, when these modifications were necessary to  
16 afford (and would not fundamentally alter the nature of) these goods, services, facilities, or  
17 accommodations.

### Failure to Maintain Accessible Features

19       31. Defendants additionally violated the ADA by failing to maintain in operable  
20 working condition those features of the Facility that are required to be readily accessible to and  
21 usable by persons with disabilities.

32. Such failure by Defendants to maintain the Facility in an accessible condition  
33 was not an isolated or temporary interruption in service or access due to maintenance or  
34 repairs.

25       33. Plaintiff seeks all relief available under the ADA (i.e., injunctive relief, attorney  
26 fees, costs, legal expense) for these aforementioned violations. 42 U.S.C. § 12205.

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## VII. SECOND CLAIM

## Unruh Act

34. Plaintiff re-pleads and incorporates by reference the allegations contained in each of the foregoing paragraphs, and incorporates them herein as if separately re-pled.

35. California Civil Code § 51 states, in part, that: All persons within the jurisdiction of this state are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever.

36. California Civil Code § 51.5 also states, in part that: No business establishment of any kind whatsoever shall discriminate against any person in this state because of the disability of the person.

37. California Civil Code § 51(f) specifically incorporates (by reference) an individual's rights under the ADA into the Unruh Act.

38. Defendants' aforementioned acts and omissions denied the physically disabled public – including Plaintiff – full and equal accommodations, advantages, facilities, privileges and services in a business establishment (because of their physical disability).

39. These acts and omissions (including the ones that violate the ADA) denied, aided or incited a denial, or discriminated against Plaintiff by violating the Unruh Act.

40. Plaintiff was damaged by Defendants' wrongful conduct, and seeks statutory minimum damages of \$4,000 for each offense.

41. Plaintiff also seeks to enjoin Defendants from violating the Unruh Act (and ADA), and recover reasonable attorneys' fees and costs incurred under California Civil Code § 52(a).

## VIII. THIRD CLAIM

## **Denial of Full and Equal Access to Public Facilities**

42. Plaintiff re-pleads and incorporates by reference the allegations contained in each of the foregoing paragraphs, and incorporates them herein as if separately re-pled.

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1       43. Health and Safety Code § 19955(a) states, in part, that: California public  
2 accommodations or facilities (built with private funds) shall adhere to the provisions of  
3 Government Code § 4450.

4       44. Health and Safety Code § 19959 states, in part, that: Every existing (non-  
5 exempt) public accommodation constructed prior to July 1, 1970, which is altered or  
6 structurally repaired, is required to comply with this chapter.

7       45. Plaintiff alleges the Facility is a public accommodation constructed, altered, or  
8 repaired in a manner that violates Part 5.5 of the Health and Safety Code or Government Code  
9 § 4450 (or both), and that the Facility was not exempt under Health and Safety Code § 19956.

10       46. Defendants' non-compliance with these requirements at the Facility aggrieved  
11 (or potentially aggrieved) Plaintiff and other persons with physical disabilities. Accordingly,  
12 Plaintiff seeks injunctive relief and attorney fees pursuant to Health and Safety Code § 19953.

## **IX. PRAYER FOR RELIEF**

14 WHEREFORE, Plaintiff prays judgment against Defendants, and each of them, for:

- 15        1. Injunctive relief, preventive relief, or any other relief the Court deems proper.

16        2. Statutory minimum damages under section 52(a) of the California Civil Code

17                  according to proof.

18        3. Attorneys' fees, litigation expenses, and costs of suit.<sup>2</sup>

19        4. Interest at the legal rate from the date of the filing of this action.

20        5. For such other and further relief as the Court deems proper.

Dated: 10/22/2021

## MOORE LAW FIRM, P.C.

/s/ *Tanya E. Moore*

Tanya E. Moore

Tonya L. Nunn  
Attorney for Plaintiff

Jose Trujillo

<sup>2</sup> This includes attorneys' fees under California Code of Civil Procedure § 1021.5.

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3  
**VERIFICATION**  
4  
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I, JOSE TRUJILLO, am the plaintiff in the above-entitled action. I have read the foregoing Complaint and know the contents thereof. The same is true of my own knowledge, except as to those matters which are therein alleged on information and belief, and as to those matters, I believe them to be true.

I verify under penalty of perjury that the foregoing is true and correct.

Dated: 10/22/2021

/s/ Jose Trujillo

Jose Trujillo

I attest that the original signature of the person whose electronic signature is shown above is maintained by me, and that his concurrence in the filing of this document and attribution of his signature was obtained.

/s/ Tanya E. Moore

Tanya E. Moore

Attorney for Plaintiff,  
JOSE TRUJILLO